



City of Albuquerque

Legislative File Number AC-06-13 (version 1)

INTER-OFFICE MEMORANDUM

June 1, 2006

AC-06-13 - 05DRB-01906; 05DRB-01907; 05DRB-01908; Project # 1003800 Jay Rowland for Nor Este Neighborhood Association, appeals the Development Review Board's approval of a Vacation of Public Right-of-Way, a Preliminary Plat, and a Temporary Deferral of Construction of Sidewalks for all or a portion of Lot(s) 1-4, Block(s) 2, North Albuquerque Acres, Unit 3 (to be known as La Cueva Oeste) zoned R-D residential and related uses zone, developing area, located on Eagle Rock Avenue NE, between Ventura Boulevard NE and Barstow Boulevard NE, containing approximately 4 acres. (C-20). Sheran Matson, Development Review Board Chair

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BACKGROUND

La Cueva Oeste is a 10 lot residential subdivision lying within the boundaries of the La Cueva Sector Development Plan. The property is zoned RD/3dus per acre. The 10 lots were created from 4 approximately one-acre lots, part of the original platting of North Albuquerque Acres land. (SEE EXHIBIT A.)

Lots 1 and 2 of the original four lots were owned by the Albuquerque Metropolitan Flood Control Authority (AMAFCA) in fee simple. Lots 3 and 4 were owned by Pete Daskalos. An agreement was reached among the parties. A summary of that agreement is: (1) Mr. Daskalos would donate a portion of his two lots to AMAFCA as part of the La Cueva Drainage Channel; (2) In exchange, AMAFCA would allow Mr. Daskalos to purchase those portions of Lots 1 and 2 not needed for the La Cueva Channel. This agreement provided the amount of land needed to complete this portion of the La Cueva

Channel and allowed the excess AMAFCA property to be developed.

The portion of Lots 1 and 2 now identified through this platting action as part of the La Cueva Channel drainage right-of-way is shown as Tract A on the plat. The portion of Lots 3 and 4 donated to AMAFCA for the La Cueva Channel is shown as Tract B on the plat. (SEE EXHIBIT B.)

DRB RESPONSES TO THE APPEAL

NOTE: Appellant's points appear in italics. DRB's responses follow.

1. *“ This has always been treated and advertised as a minor preliminary plat, but is really a major preliminary plat. This needs to be re-advertised and re-accomplished as a major plat.”*

The legal ad for this project appeared in the Albuquerque Journal on Monday, December 26, 2005. The requested vacation of public right of way was the public hearing request. However, the preliminary plat and temporary deferral of sidewalks were also included in the legal ad. (SEE EXHIBIT C.) Planning sent out notices to property owners within 100 feet, the agent posted yellow signs at the property, the DRB agenda was posted on the City web site and outside the DRB hearing room.

The letters sent to the two designated Noreste Neighborhood Association representatives by the agent, Rio Grande Engineering, specifically mentioned the platting action along with the requested vacation of public right of way and sidewalk deferral. (SEE EXHIBIT D.)

In fact, one of the Noreste Neighborhood Association officers, Joe Yardumian, was present at both DRB hearings on this plat. He was also one of the recipients of the information letter sent by Rio Grande Engineering. At the first hearing held on January 11, 2006, he stated that he, as the neighborhood association representative, was present to speak primarily to the issue of the La Cueva Channel's ability to handle the drainage needs of the area and to be re-assured that no large development would occur until the channel was completed. He also stated, “We don't have any major problems with this development”. (SEE EXHIBITS E and F.)

At the second DRB hearing on La Cueva Oesta held April 12, 2006, Mr. Yardumian was again present as were Lisa Abeyta, another area resident and Jay Rowland, the appellant. Mrs. Abeyta and Mr. Rowland did not speak. Mr. Rowland did not sign the DRB sheet to speak or to receive comments. At this hearing Mr. Yardumian expressed concern that the neighborhood association had not seen the development plans for this subdivision. Mr. Yardumian did not voice any objection to the proposed 10-lot subdivision after viewing the plat. (SEE EXHIBIT G and H)

It is evident that the Noreste Neighborhood Association knew of this proposed development.

They had sufficient time to review the plans and provide comments. The requested actions were properly noticed.

2. *Appellant is requesting that the approved action be remanded back to DRB because the neighborhood association has not received the final drainage plan. Appellant wants to ensure the drainage and channel are properly configured. "The final decision on this project was delayed by the Planning Department even after the DRB meeting because the information from AMAFCA has not been provided to the City or us. See the attached letter, dated May 9, 2006 and revised plan. This needs to be returned to DRB until all parties have been provided the information."*

As stated previously, representatives of the neighborhood association were present at the first DRB meeting held in January 2006. Between that hearing and the last one in April 2006 at which time the preliminary plat was approved, the neighborhood had sufficient time to review all plans and other relevant materials related to drainage and the AMAFCA La Cueva Channel.

The May 9, 2006 letter to which Appellant refers was written to clarify some incorrect language on Tract A of the preliminary plat. The original language referred to Tract A as "existing AMAFCA drainage right of way". This language was incorrect because the drainage right of way was not defined until the La Cueva Oeste platting action occurred. The language was corrected after DRB received the May 9, 2006 AMAFCA letter. (SEE EXHIBIT I, B, and J.)

The distinction is important because the La Cueva Sector Plan, within which boundaries this property lies, does not permit the inclusion of existing public right of way in determining the number of lots allowed in a residential subdivision. (SEE EXHIBIT K)

3. *"We also have not been provided a view analysis of this project as required by the La Cueva Sector Plan. This needs to be completed."*

The view analysis to which Appellant refers is contained within Section 5.4.6 Common Design Regulations of the La Cueva Sector Plan. The Plan does not require developers who build on lots over 5,000 square feet to meet any design regulations. The La Cueva Oeste Subdivision lots are all over 6,000 square feet. (SEE EXHIBIT K)

4. *"Schools are already overpopulated and 3du must be adhered to strictly. Ten homes on less than two acres of private land create further overpopulation in our schools."*

The developer has 3.42 acres of land from which to get a maximum of 3 dwelling units per acre. Multiplying 3.42 by 3 results in 10.26 lots. Because portions of lots cannot be rounded up to the next whole number, 10 lots was the maximum number allowed. La Cueva Oeste has 10 lots.

5. *"Ten homes on less than two acres violate the zoning of 3du per acre. The correct number of homes should be 5 on 1.883 acres. The remaining portions of the original 4*

acres have been transferred to AMAFCA as an existing public drainage right of way before approval of this project. It is our understanding that AMAFCA owned the land in fee simple to protect the public from drainage problems and has agreed that the end result of the development will be a public right of way for the drainage. It is our contention that there has been a right of way in existence, in reality, since AMAFCA has existed, but certainly since they owned the property.

AMAFCA purchased Lots 1 and 2 and owned them in fee simple. They knew that, as development occurred in the area, the La Cueva Channel would become a concrete lined structure and would exist somewhere in this vicinity. Prior to this platting action, AMAFCA had not designated any portion of Lots 1 and 2 as existing drainage right of way because the exact alignment was not in existence. Therefore, the public drainage right of way across this subdivision did not exist before this platting action. In fact, it will legally exist only after the final plat for La Cuvita Oeste Subdivision is recorded.

Many public entities, AMAFCA and the City of Albuquerque included, own property. This does not mean that all publicly owned property is designated as right of way. AMAFCA regularly disposes of excess property not needed for drainage purposes. This excess property is frequently never designated as public right-of-way.

The actual acreage from which the number of lots was actually determined is 3.42 acres. This number includes the total acreage of Lots 1 through 4 plus the 5 foot vacated right of way easement shown on the plat minus the existing easements for roadway purposes for Eagle Rock Avenue and Barstow Street. The two easements existed before this platting action. Therefore, the acreage in the easements could not be counted in determining the total acreage from which the number of lots was created. This acreage was not counted.

6. *“The clear intent of the La Cueva Sector Plan was for a transition of residential density from 7du to 3du in the City while transitioning to 1du in the County. The major drainage arroyos/channels must be deleted from gross acreage to determine the acreage available for residential homes to be built upon at 3du. It is not consistent with the sector plan to provide half the acreage to public right of way/easement and then have homes built on the remainder of land at twice the authorized dwelling units.”*

This was previously addressed in Item 5 above.

7. *“Residential development that has lot sizes less than 5000 square feet will be subject to site plan of subdivision approval by the DRB. At least one lot, and maybe more, appear to be under 5,000 square feet after the public rights of way required for the streets and drainage. That has not been complied with.”*

All lots shown on the plat are over 6,000 square feet. The issue of counting public rights-of-way was previously discussed in Item 5 above.

8. *“ All these arroyos that are projected to carry large volumes of water... must have the public protected from the eventual flooding in these arroyos.. If homes are going to be built in and around ... drainage arroyos, developers must follow the various options allowed AMAFCA... .Development would not be allowed without protection of the public with a public right of way; therefore, the public right of way must be deducted from the gross acreage allowed for development... ”*

This issue was previously discussed in Items 5, 6 & 7 above.

APPROVED:

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x:share/council/appeals/2006/ac-06-13